IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2311 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMMAD SHARIF @ MOHMMAD RAFIQ @ DON SHEIKH MOHMMAD

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Mohammedsharif @ Mohammedrafik @ Don Shaikhmohammed Shaikh, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad

City, Ahmedabad, in exercise of powers under Section 3(1) of the PASA Act, dated January 15, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration four offences registered against the petitioner with Nashabandhi police station. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Petitioner has raised many contentions. Learned advocate for the petitioner contended that a representation was made on March 22, 2000 demanding certain documents. The said representation has been rejected by the State Government by a communication dated March 29, 2000 which was served on the detenue on April 6, 2000. The documents demanded therein are not supplied. On the other hand, Mr. Dave, learned AGP has submitted that while rejecting the representation, the government directed the detaining authority to supply the documents. However, on perusal of the file, he submitted that the compliance has not been reported by the detaining authority to the government. It is also contended that there is improper exercise of power under section 9(2) of the PASA Act.

#. It has also been contended on behalf of the detenue that some of the documents in respect of CR No. 420/99 and 44/2000 are not legible. These documents are at page nos. 51, 53 and 64. Learned AGP as well as this Court has examined these documents and they are found to be not legible. This can be said to have affected the right of the detenue of making an effective representation but due to non supply of documents as well as supply of illegible documents. The order, therefore, is bad because there is improper exercise of powers under section 9(2) of the PASA Act in respect of the statements of anonymous witnesses. The documents supplied are illegible in respect of the registered offences and there is non-supply of documents in respect of some of the registered offences. The petition, therefore, deserves to be allowed.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority

has observed that the fear expressed by the witnesses an the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenue while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenue of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. The petition is allowed. The impugned order of detention dated 15th January, 2000 is hereby quashed and set aside. The detenue - Mohammedsharif @ Mohammedrafik @ Don Shaikhmohammed Shaikh, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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